



WILLIAM T FUJIOKA  
Chief Executive Officer

## County of Los Angeles CHIEF EXECUTIVE OFFICE

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January 22, 2008

The Honorable Board of Supervisors  
County of Los Angeles  
383 Kenneth Hahn Hall of Administration  
500 West Temple Street  
Los Angeles, CA 90012

Dear Supervisors:

### **TECHNICAL CHANGES TO THE DEFINED CONTRIBUTION PLANS (3 VOTES)**

#### **IT IS RECOMMENDED THAT YOUR BOARD:**

Adopt the accompanying resolution and ordinance implementing technical amendments to the 401(a) Termination Pay Pick-Up Plan, 401(k) Deferred Earnings Plan, 457 Deferred Compensation & Thrift Plan ("Horizons Plan"), and the 401(k) Savings Plan to keep the plans in compliance with Federal tax law and improve the operation of the plans.

#### **PURPOSE/JUSTIFICATION OF RECOMMENDED ACTION**

The aforementioned defined contribution plans are tax favored employee benefit plans that must be set-up and operated in accordance with Federal tax law. Legislative changes in the form of the Pension Protection Act of 2006 and recently issued regulations and other published guidance from the Internal Revenue Service (IRS) now permit or require the various technical changes recommended herein. The purpose of these recommendations is to implement change in the following areas:

#### **Tax Deferred Contributions from Termination Pay**

Employees who terminate County employment may receive "termination pay" for unused accrued vacation, sick leave, or other accrued time pursuant to longstanding provisions contained in the County Code and various memoranda of understanding.

Board of Supervisors  
GLORIA MOLINA  
First District

YVONNE B. BURKE  
Second District

ZEV YAROSLAVSKY  
Third District

DON KNABE  
Fourth District

MICHAEL D. ANTONOVICH  
Fifth District

Recently issued IRS regulations now permit tax deferred employee contributions to the Horizons Plan and Savings Plan to be taken from termination pay in the same manner they may be taken from ordinary salary earned prior to termination. However, total employee contributions in any given year, including contributions from termination pay, may not exceed the annual dollar limits otherwise applicable to these plans (\$15,500 in 2008 or \$20,500 for employees age 50 and older).

We are recommending that the Horizons Plan and Savings Plan be amended to take full advantage of the new regulations. This is a clear tax advantage for the affected employees at no additional cost to the County. For example, an employee who signs-up for a 5 percent deferral into the Horizons Plan will now have 5 percent of his or her termination pay automatically contributed to the Plan on a tax deferred basis providing the aforementioned annual dollar limits are not exceeded. It is important to note, however, that no matching County contributions will be made against contributions taken from termination pay. Therefore, there will be no increase in the County cost attributable to the Horizons Plan or Savings Plan.

In 2004, your Board approved a separate 401(a) plan known as the Termination Pay Pick-Up Plan that also permitted tax deferred contributions from termination pay. This Plan applied to represented employees exclusively. In addition, your Board approved similar changes to the 401(k) Savings Plan that applied to non-represented employees exclusively. In April 2006, we informed your Board that these plans were being suspended on a going forward basis due to oral notification from the IRS that it was reversing its longstanding position on Internal Revenue Code provisions key to the legal viability of these programs. The IRS promised that more guidance would be forthcoming on this subject.

Although we are still waiting for IRS guidance related to the Termination Pay Pick-Up Plan, the IRS has separately issued final written regulations that clearly permit the changes we are recommending at this time. These changes involve none of the problems or risk associated with the former program. With regard to the former program, we are continuing to work with counsel and the IRS to determine the appropriate disposition of monies contributed to the program by employees who terminated before the program was suspended. We will keep your Board informed as to the status on this issue.

#### **“Grandfathering” Certain Ineligible Contributions**

On December 4, 2007, your Board approved an amendment to the Horizons Plan that grandfathered employee contributions to that plan from approximately 79 employees who became ineligible to make contributions because they changed their employment status from full-time to part-time. Part-time employees are not permitted to make

employee contributions or receive matching County contributions under the Horizons Plan or the Savings Plan. In 2004, however, a systems error was discovered that was allowing such contributions for employees who once held permanent full-time status. As explained in the December 4, 2007 Board letter, the problem was corrected on a going forward basis. The impermissible contributions were stopped in March 2004, and there has been no further recurrence of this problem. On advice of counsel, a request was submitted to the IRS Voluntary Correction Program to approve a one-time grandfathering of the contributions that were erroneously allowed. The IRS found this approach to be an acceptable correction and tentatively granted its approval contingent on your Board first taking action to implement the change.

We have the same issue in the Savings Plan and are recommending the same solution. Approximately 84 employees are affected in this case. On advice of counsel, we have followed the same steps with regard to the IRS. In this instance, however, the IRS has already granted its final approval without any requirement that your Board act first. The IRS deals with 457 plans and 401(k) plans separately, and it essentially gave the County more time to make this correction than was the case with the Horizons Plan. The accompanying resolution contains a list of the affected employees as required by the IRS.

#### **Transfer of Funds to Purchase LACERA Service Credit**

Currently, employees in active County service may not transfer funds from the Savings Plan to purchase additional retirement service credit at Los Angeles County Employees Retirement Association (LACERA). They may do so within 120 days after separating from County service, but they may not make the transfer while still employed. "Additional retirement service credit" for this purpose means purchased credit for prior public service not otherwise creditable under the 1937 Retirement Act. This may include, for example, prior County temporary service. It may also include purchased credit for up to five years of service over and above any actual service – temporary or otherwise. This is often referred to as "Air Time" or "Additional Retirement Credit (ARC)."

The Pension Protection Act of 2006 permits the transfer of funds for these purposes either before or after separation from employment. We see no reason not to permit such transfers during active County service, and the accompanying ordinance amends the Savings Plan to make this an option in accordance with the new law. Transfers of assets for this purpose may be used to purchase service credit under a LACERA plan or under any governmental "defined benefit" retirement plan to which an employee may otherwise have the right to make such a purchase.

The same issue and the same recommended change also applies to the Deferred Earnings Plan. The Deferred Earnings Plan previously applied to physicians, primarily, and has been closed off to new contributions since 2001. The affected physicians are now eligible to participate in the Savings Plan and may transfer their Deferred Earnings Plan assets to the Savings Plan. However, much of the previously accumulated assets still remain in the old Deferred Earnings Plan and, therefore, this change should be extended to that plan as well.

### **Benefit Distributions to Beneficiaries other than Spouses**

The Pension Protection Act also extends to non-spouse beneficiaries certain benefit distribution privileges that were heretofore limited to surviving spouses. A “non-spouse beneficiary” for this purpose may essentially be anyone who is not a spouse. It could, for example, be a parent or child, or a domestic partner. The benefit distribution privileges include the ability to make emergency withdrawals in the same manner a surviving spouse could make them, and the ability to rollover assets to an individual retirement account when the beneficiary is otherwise eligible to receive a distribution from the plans. A married employee must have his or her spouse’s notarized consent to identify someone other than the spouse as the primary beneficiary.

These changes have already been incorporated into the day-to-day administration of the County’s defined contribution plans. They represent no change in current practice. However, the IRS requires that the practice be in synch with the authorizing plan documents and, therefore, these changes are included in the accompanying ordinance.

### **Employee Settlement Awards**

Employees who are discharged, suspended, or demoted due to disciplinary action may ultimately have the action reversed or mitigated by County management or by the Civil Service Commission. Where this happens, Board approved policy provides, under specified conditions, for the restoration of lost compensation (a “settlement award”). Where an affected employee is also a participant in the Horizons Plan or the Savings Plan, the restoration must address the lost tax deferred contributions to the plan, including matching contributions, and the lost investment income on those contributions.

IRS regulations provide specific guidance on how to make an employee whole for lost contributions to a defined contribution plan, and the accompanying ordinance fully implements that guidance. Where employee contributions were lost during the current tax year, the contributions will be taken from the settlement award payment for lost salary, and the County will make the matching contributions that would otherwise have been required. The County will also contribute an additional amount equal to the

investment return that money would have earned based on the actual performance of the assets the employee otherwise had invested in the plan during the period in question.

Where employee contributions were lost during a prior tax year, no employee contributions may be taken from the settlement award payment. However, the County will nevertheless make the matching contributions that would have been made, but for the disciplinary action, plus the earnings that would have been made on those contributions. In addition, the County will contribute a tax deferred amount to the plan equal to two percent of the employee's compensation. This is the remedy set out in the IRS regulations where a prior tax year is involved.

We estimate that fewer than 50 employees per annum receive settlement awards. For those who do, the process outlined above conforms substantially with the administrative

practices already in place, particularly with regard to the treatment for lost contributions in the current tax year. County payment for the lost investment return is new, and the two percent contribution for prior tax years is also new, but the process otherwise parallels current policy. This change affects the Horizons Plan and the Savings Plan.

### **Alternate Members for Plan Administrative Committees**

The day-to-day oversight of each of the defined contribution plans has been delegated by your Board to "Plan Administrative Committees." The funds in each plan are held in trust and the members of each committee are considered plan fiduciaries. Committee meetings are conducted pursuant to the Brown Act.

In the case of the Horizons Plan, there are a total of nine committee members, four representing County management, four representing employee unions, and one public member selected by your Board. The four union members consist of two representatives from the Coalition of County Unions and two representatives from SEIU Local 721. Each of these representatives has two named alternate members that may serve in the absence of the primary representative. Alternate members may not serve in the absence of anyone other than their designated primary representative.

We are recommending that the rules be changed to permit any alternate member representing the Coalition of County Unions to serve in the absence of any primary union member from that union group, and to permit any Local 721 alternative member to serve in the absence of any primary union member from that group. This change supports the important fiduciary role performed by these representatives.

Honorable Board of Supervisors  
January 22, 2008  
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All Plan Administrative Committee meetings are chaired by the Chief Executive Officer or any of two alternate members for the Chief Executive Officer. In this connection, we are recommending a further change that will permit the Chief Executive Officer to delegate this responsibility to a substitute representative within the office. This representative will then have two alternates who may serve in his absence.

Unlike the other changes outlined above, these changes are not mandated by law or IRS dictate, but we believe them to be more sensible and will improve the administration of the program. The Coalition of County Unions and Local 721 concur.

### **Implementation of Strategic Plan Goals**

The actions recommended in this letter promote workforce excellence by resolving workplace issues and by improving employee morale through providing an effective vehicle for retirement savings.

### **FISCAL IMPACT/FINANCING**

The administrative cost to operate each defined contribution plan is fully paid through respective plan participant fees charged monthly to their account(s). There is no measurable County cost associated with any of the recommendations contained herein.

### **FACTS AND PROVISIONS/LEGAL REQUIREMENTS**

The accompanying ordinance also deletes various provisions in the defined contribution plans that have been rendered obsolete by the aforementioned changes in law or IRS regulations or guidance.

It will be necessary for the Executive Officer/Clerk of the Board of Supervisors to insert the ordinance number for the accompanying ordinance in the space provided in Section 5.26.020 of that ordinance, and in the space provided in the accompanying resolution.

**IMPACT ON CURRENT SERVICES (OR PROJECTS)**

None.

Appropriate consultations have been conducted with impacted employee representatives. There has been no expressed opposition to any of these recommendations.

County Counsel has approved as to form the accompanying ordinance and resolution.

Respectfully submitted,



WILLIAM T FUJIOKA  
Chief Executive Officer

WTF:SRH:DL  
WGL:DT: df

c: County Counsel  
Director of Personnel  
Auditor-Controller  
Department Heads  
Personnel Officers  
Coalition of County Unions  
SEIU Local 721  
Guild for Professional Pharmacists  
Environmental Health Specialists  
Public Defender Investigators  
Professional Peace Officers Association  
Union of American Physicians and Dentist  
Great-West Retirement Services

## ANALYSIS

An ordinance amending Title 5 – Personnel to make various technical changes to the County sponsored defined contribution plans known as the “Horizons Plan,” the “Savings Plan,” the “Deferred Earnings Plan,” and the “Termination Pay Pick-Up Plan” to:

- Provide for the treatment of employee termination pay as regular salary for the purpose of calculating employee contributions under the Horizons Plan and the Savings Plan;
- Grandfather certain employee contributions under the Savings Plan;
- Change the rules relating to the assignment of County and union representatives to the Horizons Plan and Savings Plan Administrative Committees to permit greater flexibility in the use of alternate/substitute members to serve in the absence of appointed members;
- Provide, under the Horizons Plan and Savings Plan, for the disposition of settlement awards paid to plan participants who are reinstated following disciplinary action; and
- Make other technical changes to comply with Federal tax law and Internal Revenue Service regulations and published guidance.

RAYMOND G. FORTNER, JR.  
County Counsel

By:   
HALVOR S. MELOM  
Principal Deputy County Counsel  
Labor & Employment Division



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RAYMOND G. FORTNER, JR.  
County Counsel

By: \_\_\_\_\_  
HALVOR S. MELOM  
Principal Deputy County Counsel  
Labor & Employment Division

HSM:mga  
(requested: 12/11/07)  
(revised: 12/13/07)

**ORDINANCE NO. \_\_\_\_\_**

An ordinance amending Title 5 – Personnel of the Los Angeles County Code to make various technical changes to the Deferred Compensation & Thrift Plan (“Horizons Plan”), the Deferred Earnings Plan, the Savings Plan, and the Termination Pay Pick-Up Plan including changes necessary comply with Federal tax law and Internal Revenue Service regulations and published guidance.

**SECTION 1.** Section 5.18.050 is hereby amended to read as follows:

**5.18.050 Commencing Participation.**

A. An Eligible Employee shall become a Participant upon execution of a Payroll Deduction Authorization Agreement.

B. Notwithstanding any other Plan provision, no Eligible Employee may execute a Payroll Deduction Authorization Agreement and become a Participant on or after January 1, 2008, and any Eligible Employee who previously became a Participant shall cease to be a Participant, unless he has an Account balance on that date.

**SECTION 2.** Section 5.18.070 is hereby amended to read as follows:

**5.18.070 Amount of Contribution.**

A. Subject to the limitations set forth in Section 5.18.110, an Eligible Employee may elect to have the County deduct a fixed percentage or dollar amount from his Termination Pay and contribute such fixed percentage or dollar amount to the

Plan pursuant to a Payroll Deduction Authorization Agreement. The County shall pick up such contribution under Code section 414(h)(2).

B. Notwithstanding any other provision of the Plan, on and after January 26, 2007, no Payroll Deduction Authorization Agreements shall be executed, and no Termination Pay Contributions shall be made to or received by the Plan on behalf of any Participant irrespective of whether such Participant has executed a Payroll Deduction Authorization Agreement before that date.

**SECTION 3.** Section 5.23.150 is hereby amended to read as follows:

**5.23.150 Rollovers and Plan-to-Plan Transfers**

...

D. Trustee-to-Trustee Transfers to Purchase Permissive Service Credit and as Repayment of Contributions and Interest.

1. Notwithstanding any provision of Section 5.23.070 to the contrary, effective on or after September 1, 2007, a Participant may direct the Administrative Committee to make a direct trustee-to-trustee transfer of all or part of the Participant's Accounts, to the extent vested, to a defined benefit governmental plan (as defined in Code section 414(d)) in California if such transfer is (a) for the purchase of service or retirement credit that may be purchased under the terms of such defined benefit governmental plan, or (b) a repayment of contributions (including interest thereon) that may be made under the terms of such defined benefit governmental plan with respect to

an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer.

2. Unless the Participant directs otherwise, transfers shall be made pro rata from each subaccount within the Participant's Account and from each Investment Fund in which those subaccounts are invested.

3. The Administrative Committee may take any action and may require the Participant to provide any information or documentation necessary to permit the Administrative Committee to satisfy any obligation imposed on the Administrative Committee by the Code and the regulations thereunder to make a reasonable determination that the trustee-to-trustee transfer satisfies the requirements of the Code and the terms of the Plan and will be accepted by the transferee plan.

E. Certain Prior Trustee-to-Trustee Transfers to Purchase Permissive Service Credit and as Repayment of Contributions and Interest.

1. Effective on or after January 1, 1998, an Identified Participant may direct, and will be treated as having directed, the Administrative Committee to make a direct trustee-to-trustee transfer of his or her Transferred Benefits to a defined benefit governmental plan (as defined in Code section 414(d)) in California if such transfer is (a) for the purchase of service or retirement credit that may be purchased under the terms of such defined benefit governmental plan, or (b) a repayment of contributions (including interest thereon) that may be made under the terms of such defined benefit

governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer.

2. For purposes of this Section 5.23.150.E only:

a. An "Identified Participant," is a Participant identified by the TPA as having rolled over to a defined benefit governmental plan funds that were not eligible for distribution or withdrawal as provided under Section 5.23.070.

b. An Identified Participant's "Transferred Benefits" is the portion of that Participant's Account that was not eligible for distribution or withdrawal under Section 5.23.070, but which was nevertheless rolled over to a defined benefit governmental plan.

3. The Administrative Committee may take any action and may require the Participant to provide any information or documentation necessary to permit the Administrative Committee to satisfy any obligation imposed on the Administrative Committee by the Code and the regulations thereunder to make a reasonable determination that the trustee-to-trustee transfer satisfies the requirements of the Code and the terms of the Plan and will be accepted by the transferee plan.

**SECTION 4.** Section 5.25.020 is hereby amended as follows:

**5.25.020 Definitions**

. . .

A. “Administrative Committee” means the committee serving as administrator of the Plan, which may delegate all or part of its powers, duties and authority in such capacity (without ceasing to be the administrator of the Plan) as hereinafter provided.

1. The Administrative Committee shall consist of the following members: the Auditor-Controller, Treasurer and Tax Collector, Director of Personnel and Chief Administrative Officer of the County (collectively, the “County Representatives”), two members appointed by The Coalition of County Unions, AFL-CIO (the “Coalition”), two members appointed by SEIU Local 721660, Los Angeles County Employees Association SEIU, AFL-CIO (“LACEA, Local 660, SEIU”) and one member who shall be a qualified elector of the County who is not connected with County government in any capacity, and shall be appointed by the Board for a three-year term (“Board Appointee”).

2. The Board Appointee shall have significant experience in institutional investing, either as investment officer of a bank, or trust company; or as investment officer of an insurance company, or in an active, or advisory, capacity as to investments of institutional or endowment funds. The Board may designate an alternate to serve in the Board Appointee’ s place for a term that runs concurrently with the Board

Appointee' s term. The alternate must satisfy the same qualifications as the Board Appointee. The Board Appointee or the alternate may resign from the Administrative Committee by giving the Board 30 days written notice, which notice may be waived by the Board, and the Board may remove the Board Appointee or the alternate for any reason by giving the Board Appointee or alternate 15 days written notice, which notice may be waived by the Board Appointee or alternate. Notwithstanding the expiration of his or her term, the Board Appointee or alternate shall continue to serve as a voting member of the Administrative Committee until a successor has been duly appointed. The Board Appointee or alternate shall be compensated \$100 for each meeting attended by such Appointee or alternate.

3. The voting members for the Coalition and ~~LACEA~~, SEIU Local ~~660721~~, SEIU each may designate two named alternates ~~either among whom~~ one of which shall serve as the voting member in the absence of ~~their respective~~ an appointed members. The County Representatives also each may designate two named alternates either one of which shall serve as the voting member in the absence of their respective County Representative.

...

F. "CAO" means the Chief ~~Administrative~~ Executive Officer of the County appointed by the Board pursuant to the Los Angeles County Code. The CAO shall designate his or her County Representative to the Administrative Committee.

...

J. "Compensation" means base rate, as established in Title 6 of the Los Angeles County Code, as amended, plus any monthly bonus established as a designated number of schedules and/or levels in the Standardized Salary Schedule contained in such Title 6. Compensation shall not include any of the following:

1. Overtime compensation;
2. Any lump-sum payoff or reimbursement for unused accumulated overtime, vacation, holiday time, or sick leave benefits;
3. Compensation pursuant to Section 6.16.010 of the Los Angeles County Code;
4. Any hourly bonus;
5. Any monthly bonus established as a flat dollar amount or as a percentage of base rate;
6. Except as provided in Section 5.25.055, any Settlement Award (as defined in Section 5.25.055).

...

V. "Includible Compensation" means wages, within the meaning of Section 3401(a) of the Code (for purposes of income tax withholding) but determined without



regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, paid to an Employee by the County for services performed for the County. Includible Compensation also includes (i) any elective deferral (as defined in Code Section 402(g)(3)), such as Tax Deferred Contributions under the Savings Plan, (ii) any amount which is contributed to a plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code Sections 125, 132(f)(4) or 457, and (iii) any amount that is not available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) because the Employee is unable to certify that the Employee has other health coverage. In order to be taken into account as Includible Compensation, an item of compensation must be paid (or treated as paid) to the Participant prior to Separation from Employment, provided, however, the following types of post-employment payments are included within Includible Compensation if they are paid by the later of 2½ months after Separation from Employment or the end of the calendar year in which the Separation from Employment occurs: (i) payments that, absent a Separation from Employment, would have been paid to the Participant in the normal course of employment and are regular compensation for services during regular working hours or outside regular working hours (such as overtime or shift differential), bonuses or other similar compensation; and (ii) Termination Pay. Except as provided in Section 5.25.055, Includible Compensation shall not include any Settlement Award (as defined in Section 5.25.055). Any item of taxable income that is ~~excluded from~~not included in this definition of Includible Compensation may not be deferred in accordance

with a Participant's Participation Agreement.

...

PP. "Termination Pay" means amounts paid by the later of 2½ months after the Participant's Separation from Employment or the end of the calendar year in which the Participant's Separation from Employment occurs in redemption of accrued bona fide sick, vacation or other leave that otherwise would be paid in cash to the Participant under section 6.24.040A of the Los Angeles County Code, and which the Participant would have been able to use if employment had continued.

PP.QQ. "TPA" means the third-party administrator who has entered into a contract with the County to provide record-keeping and other administrative services for the Plan.

QQ.RR. "Trial Court Act" means the Trial Court Employment Protection and Governance Act, California Government Code Section 71600 et seq.

RR.SS. "Trial Court Employee" means a "trial court employee," as defined under the Trial Court Act, who is an Eligible Employee.

SS.TT. "Trial Court Entity" means each Los Angeles County Municipal Court, Los Angeles County Superior Court, and each unified, successor trial court entity (or portion thereof) established in the County of Los Angeles pursuant to California Government Code Section 70200 et seq.

~~TT.~~UU. "Trust Agreement" means an agreement(s) executed by the County and a Trustee which establishes either a trust fund or custodial account to provide for the investment, reinvestment, administration and distribution of contributions made under the Plan and the earnings thereon, as amended from time to time.

~~UU.~~VV. "Trust Fund" means the assets of the Plan held by the Trustee pursuant to the Trust Agreement.

~~VV.~~WW. "Trustee" means the one or more persons or entities who have entered into a Trust Agreement as a trustee or custodian, and any duly appointed successor. For these purposes, the custodian of any custodial account created for the purposes of holding Plan assets must be a bank, as described in Code Section 408(n), or a person who meets the non-bank trustee requirements of paragraphs (2)--(6) of Section 1.408-2(e) of the Income Tax Regulations relating to the use of non-bank trustees.

~~WW.~~YY. "Valuation Date" means the date with respect to which the value of the assets comprising the Trust Fund or any portion thereof is determined. Unless otherwise determined by the Administrative Committee, a Valuation Date occurs each day.

...

**SECTION 5.** Section 5.25.030 is hereby amended to read as follows:

**5.25.030 Election to become a participant**

...

C. Notwithstanding the foregoing, a Participant or an Eligible Employee may elect to defer a fixed percentage or dollar amount of the portion of his Eligible Earnings consisting of Termination Pay. A Participant's Termination Pay deferral shall be based on the deferral election on record on the last day of the month prior to the month the Separation from Employment occurs. An Eligible Employee must execute a Participation Agreement with the County not later than the month prior to the month the Separation from Employment occurs.

**SECTION 6.** Section 5.25.055 is hereby added to read as follows:

**5.25.055 Settlement Awards.**

A. Notwithstanding anything in this Plan to the contrary, the provisions in this Section 5.25.055 shall apply with respect to any Settlement Award that a Participant receives on or after January 1, 2008.

B. Definitions. For purposes of this Section 5.25.055, the following terms when used with initial capital letters shall have the following respective meanings:

1. "Current-Year Award" means the portion of a Settlement Award intended to make a Participant whole with respect to lost wages and benefits during the

Current-Year Settlement Period, which shall be treated as Compensation under the Plan.

2. “Current-Year Settlement Period” means the period during the Plan Year in which a Participant receives a Settlement Award that begins on the first date in such Plan Year on which the Participant loses any wages or benefits as a result of his or her demotion, suspension, or termination and that ends on the date that the Participant receives the Settlement Award. If the County demotes, suspends or terminates a Participant in a Plan Year prior to the Plan Year in which the Participant receives a Settlement Award, the first day of the Current-Year Settlement Period shall be January 1<sup>st</sup> of the Plan Year in which the Participant received such Settlement Award.

3. “Deemed Compensation” means the sum of a Participant’s Prior-Year Award plus Compensation that the Participant received (if any) during the Prior-Year Settlement Period.

4. “Deferral Date” means the date in each calendar month on which Participants make Deferred Compensation Contributions pursuant to Sections 5.25.030 and 5.25.040.

5. “Prior-Year Award” means the portion (if any) of the Settlement Award intended to make a Participant whole with respect to lost wages and benefits during the Prior-Year Settlement Period.

6. “Prior-Year Settlement Period” means the portion (if any) of a Participant’s period of demotion, suspension, or termination that occurs prior to the Current-Year Settlement Period.

7. “Settlement Award” means any compensation that a Participant receives pursuant to an order, judgment, award or approved settlement from an administrative agency, arbitrator or court or an executed settlement agreement between a Participant and a County advocate that causes the Participant to be retroactively reinstated to the County following the County’s demotion, suspension, or termination of such Participant and that requires or instructs the County to make such Participant whole for lost wages and benefits during the period of his or her demotion, suspension or termination without requiring the County to take specific actions with respect to the Plan.

C. Deferred Compensation Contributions. For purposes of applying the provisions in Sections 5.25.030 and 5.25.040 (including, without limitation, the limits set forth therein), the terms of this Section 5.25.055.C shall apply with respect to each Current-Year Award.

1. The Current-Year Award shall be equally divided by the number of Deferral Dates within the Current-Year Settlement Period. In accordance with the terms of the Participation Agreement in effect as of each Deferral Date within the Current-Year Settlement Period, a contribution will be made from the portion of the Current-Year Award that is attributable to each Deferral Date. The amount to be deferred and

contributed to the Plan with respect to each Deferral Date shall be deducted from the Current-Year Award.

2. For purposes of this Section 5.25.055.C, the terms of a Participant's Participation Agreement in effect as of each Deferral Date within the Current-Year Settlement Period shall be determined as follows:

a. For a Participant who continued to be an Eligible Employee during the Current-Year Settlement Period, the Participant's actual deferral elections in effect as of each Deferral Date shall apply to determine the portion of the Current-Year Award to be deferred and contributed to the Plan with respect to such Deferral Date.

b. For a Participant who was not an Eligible Employee during the Current-Year Settlement Period, the Participant's actual deferral election in effect as of the date that such Participant ceased to be an Eligible Employee shall apply to determine the portion of the Current-Year Award to be deferred and contributed to the Plan with respect to each Deferral Date.

3. Each Deferred Compensation Contribution that is made with respect to a Deferral Date as provided in this Section 5.25.055.C shall be deemed to have been made on such date.

D. Matching Contributions. For purposes of applying the provisions in Section 5.25.050 (including, without limitation, the limits set forth therein), the terms in this Section 5.25.055.D shall apply with respect to each Current-Year Award.

1. With respect to each month in the Current-Year Settlement Period, the department to which a Participant has been reinstated shall make a Matching Contribution to the Matching Account of such Participant in an amount equal to the difference between the Matching Contribution the Participant actually received in such month (if any) and the Matching Contribution the Participant would have received in such month if the Deferred Compensation Contribution described in Section 5.25.055.C that is made with respect to such month had been made on the Deferral Date in such month.

2. Each Matching Contribution that is made to a Participant's Matching Account pursuant to this Section 5.25.055.D shall be deemed to have been made in the month with respect to which such Matching Contribution was made.

E. Prior-Year Settlement Period.

1. For purposes of applying the provisions in Sections 5.25.030, 5.25.040 and 5.25.050 (including, without limitation, the limits set forth therein), the terms of this Section 5.25.055.E shall apply with respect to each Prior-Year Award.

2. No portion of the Prior-Year Award shall be deferred or contributed to the Participant's Deferred Account.

3. Corrective Contributions.

a. The department to which a Participant is reinstated shall make a corrective contribution to the Participant's Deferred Account with respect to



each Deferral Date in the Prior-Year Settlement Period, in an amount equal to the positive difference (if any) between (i) a fraction, the numerator of which is equal to 2% of such Participant's Deemed Compensation and the denominator of which is equal to the number of Deferral Dates in the Prior-Year Settlement Period, less (ii) the Deferred Compensation Contribution the Participant made on such Deferral Date (if any).

b. The department to which a Participant is reinstated shall make a corrective contribution to the Participant's Matching Account with respect to each month in the Prior-Year Settlement Period, in an amount equal to the positive difference (if any) between (i) a fraction, the numerator of which is equal to 4% of the Participant's Deemed Compensation and the denominator of which is equal to the number of months in the Prior-Year Settlement Period, less (ii) the Matching Contribution the Participant actually received in such month (if any).

4. Each corrective contribution that is made with respect to a Deferral Date as provided in this Section 5.25.055.E shall be deemed to have been made on such date. Each corrective contribution that is made with respect to a month within the Prior-Year Settlement Period as provided in this Section 5.25.055.E shall be deemed to have been made in such month. Notwithstanding anything to the contrary in this Section 5.25.055.E., the corrective contributions that a Participant is entitled to receive pursuant to this Section shall be reduced to the extent such contributions exceed the limits referenced in Section 5.25.055.E.1.

F. Contributions to Reflect Earnings. The department to which a Participant has been reinstated shall make a contribution to the Plan to reflect lost earnings on each contribution made pursuant to Sections 5.25.055.C-E with respect to such Participant in accordance with the written procedures maintained by the County pursuant to Section 5.25.055.G.

G. Procedures to implement Section 5.25.055.

1. The County shall maintain written procedures to implement this Section 5.25.055. Such procedures shall require the department to which a Participant is reinstated to notify the County prior to the Participant's receipt of a Settlement Award for the provisions in Sections 5.25.055.C to apply with respect to such Settlement Award.

2. The County shall require each department that fails to provide advance notice of a Settlement Award as described in this Section 5.25.055.G to make all applicable Plan contributions to which a Participant is entitled pursuant to Section 5.25.055 with respect to such award.

**SECTION 7.** Section 5.25.080 is hereby amended to read as follows:

**5.25.080 Benefit distributions, withdrawals and loans**

...

E. Emergency Withdrawals.

...

2. An "unforeseeable emergency" is a severe financial hardship to the Participant resulting from an illness or accident of the Participant or the Participant's spouse or dependent (as defined in ~~Code Section 152(a)~~section 152 of the Code, and for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2) or (d)(1)(B) of the Code), loss of the Participant's property due to casualty, or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the Participant. Whether a Participant is faced with an unforeseeable emergency is to be determined by the Administrative Committee or its Agent based on the relevant facts and circumstances of each case. The following events may constitute an unforeseeable emergency: imminent foreclosure of or eviction from the Participant's primary residence, the need to pay for medical expenses, such as non-refundable deductibles and prescription drug medication, and the need to pay funeral expenses of the Participant's spouse or a dependent (as defined in ~~Code Section 152(a)~~section 152 of the Code, and for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2) or (d)(1)(B) of the Code). In applying these rules, the Plan may treat the Participant's primary Beneficiary like the Participant's spouse or dependents in determining whether the Participant has incurred an unforeseeable emergency.

**SECTION 8.** Section 5.25.108 is hereby amended to read as follows:

**5.25.108 Rollovers and Plan-to-Plan Transfers**

...

C. Rollovers to Horizons

...

3. A Participant's surviving spouse who becomes eligible to receive a distribution on the Participant's death under Section 5.25.080B of the Plan or an Alternate Payee who is a Participant's spouse or former spouse who becomes eligible to receive a distribution under Section 5.25.125 of the Plan shall be treated as the Participant for the purposes of this subsection C. Additionally, a Participant's surviving Beneficiary who is not a spouse and becomes eligible to receive a distribution on the Participant's death under Section 5.25.080B of the Plan, may elect a direct trustee-to-trustee rollover to an individual retirement account or individual retirement annuity (as defined in Code section 408) established to receive such distribution in accordance with Code section 402(c)(11).

**SECTION 9.** Section 5.25.160 is hereby deleted in its entirety.

**~~5.25.160 EGTRRA sunset provision.~~**

~~Upon the sunset of the applicable EGTRRA provisions, the sections of the Plan intended to comply with EGTRRA and such other provisions that the Administrative~~

~~Committee determines are no longer applicable due to the sunset of relevant EGTRRA provisions will no longer be effective and, notwithstanding anything in the Plan to the contrary, the Plan shall be construed in accordance with the terms of the Plan in effect as of December 31, 2001, except to the extent such terms are inconsistent with the applicable provisions of the Code and guidance issued thereunder, in which case, the Plan will be construed consistent with such applicable law.~~

**SECTION 10.** Section 5.26.020 is hereby amended to read as follows:

**5.26.020 Definitions**

...

2. "Administrative Committee" means the Auditor-Controller, County Counsel, Director of Personnel, Treasurer and Tax Collector, and Chief ~~Administrative~~Executive Officer of the County, or their designated representatives.

...

10. a. "Compensation" means base rate, as established in Title 6 of the Los Angeles County Code, as amended, plus:

(1) Any monthly bonus established as a designated number of schedules and/or levels in the Standardized Salary Schedule contained in such Title 6 or established as a percentage of base rate pursuant to Parts 2 or 3 of Chapter 6.08 of such Title 6;

(2) The monthly amounts provided by Sections 5.12.200, 5.27.240A, 5.28.240A, 5.40.460 and 5.40.465;

(3) Any lump-sum payment made upon termination pursuant to Section 5.20.070 or 6.18.070 of the Los Angeles County Code.

b. Compensation shall not include any of the following:

(1) Overtime compensation;

(2) Any lump-sum payoff or reimbursement for unused accumulated overtime, vacation, holiday time, or sick leave benefits;

(3) Compensation pursuant to Section 6.16.010 of the Los Angeles County Code;

(4) Any hourly bonus;

(5) Any monthly bonus established as a flat dollar amount or as a percentage of base rate except that compensation shall include any monthly bonus paid as a percentage of base rate for employees compensated pursuant to Parts 2 or 3 of Chapter 6.08 entitled Management Appraisal and Performance Plan of the Los Angeles County Code;

(6) Except as provided in Part 4.5 of Chapter 5.26, any Settlement Award (as defined in Part 4.5).

...

16. "Eligible Employee" means a full-time permanent Employee who is not a Leased Employee, is not in an Excluded Bargaining Unit and who is designated by the Los Angeles County Board of Supervisors as eligible to participate in the Plan. For purposes hereof, "full-time permanent" means any employee appointed to an "A," "L" or "N" item pursuant to Title 6 of the Los Angeles County Code, or any employee appointed to a "D" item pursuant to said Title 6 who is required to possess a California license to practice as a Registered Nurse. Any employee who would otherwise cease to be an Eligible Employee because of a change in employment classification and/or entry into an Excluded Bargaining Unit shall remain an Eligible Employee until the last day of the month following the month in which such change or entry occurs or such later date as the Administrative Committee may provide; provided, however, that the County and representatives of an Excluded Bargaining Unit may, subject to approval by the Los Angeles County Board of Supervisors, agree that any employee who would otherwise cease to be an Eligible Employee because of certification or accretion of the employee's employment classification into an Excluded Bargaining Unit may continue as an Eligible Employee for such period as may be established in such agreement. Effective as of September 1, 1994, Special Eligible Employees shall be treated as if they are Eligible Employees until March 31, 2004 for purposes of making Tax Deferred Contributions, but not for the purpose of having any other County Contributions made on their behalf.

...

21. "415 Compensation" means wages, within the meaning of Section 3401(a) of the Code (for purposes of income tax withholding) but determined without regard to any rules that limit the remuneration included in wages based on the nature or location of the employment or the services performed, paid to an Employee by the County. Effective for years beginning on and after January 1, 1998, 415 Compensation also includes any County contribution under a cash or deferred arrangement (including Tax Deferred Contributions) for the year, any County contributions to purchase an annuity contract under Code Section 403(b) under a salary reduction agreement, any other elective deferral (as defined in Code Section 402(g)(3)) and any amount which is contributed to a plan sponsored by the County at the election of the Employee and which is not includible in gross income under Code Section 125 or Code Section 457. For Limitation Years (as defined in Section 5.26.160) beginning on and after January 1, 2001, 415 Compensation paid or made available during such Limitation Years shall include elective amounts that are not includible in the gross income of the Employee by reason of Code Section 132(f)(4). On or after January 1, 2003, 415 Compensation also includes any amount that is not available in cash to an Employee under the Choices, Options, Flexible Benefit Plans or Mega-Flex Plans (or a successor plan) because the Employee is unable to certify that the Employee has other health coverage. Except as provided in Part 4.5, 415 Compensation shall not include any Settlement Award (as defined in Part 4.5). In order to be taken into account as 415 Compensation, an item of compensation must be paid (or treated as paid) to the Participant prior to the Participant's Severance Date, provided, however, the following types of post-



employment payments are included within 415 Compensation if they are paid by the later of 2½ months after the Participant's Severance Date or the end of the calendar year in which such Severance Date occurs: (i) payments that, absent a termination from employment, would have been paid to the Participant in the normal course of employment and are regular compensation for services during regular working hours or outside regular working hours (such as overtime or shift differential), bonuses or other similar compensation; and (ii) Termination Pay. For these purposes, the "County" includes any entity the employees of which, together with employees of the County, are required to be treated as if they were employed by a single employer under Code Section 414(b), (c), (m) or (o) (taking into account any adjustment made pursuant to Code Section 415(h)), and any entity whose employees are treated as employees of the County under Code Section 414(n)."

...

42. "Special Eligible Employee" means each of the Employees designated by the Board of Supervisors of the County in the resolution enacting Ordinance No.

\_\_\_\_\_\*, who until March 31, 2004, shall be treated as if he or she is an Eligible Employee for purposes of making Tax Deferred Contributions (but no other County Contributions), notwithstanding the Employee's change in employment classification to other than full-time permanent or entry into an Excluded Bargaining Unit.

4243. "Tax Deferred Contributions" means contributions made by the County pursuant to a Compensation Deferral Agreement as specified in Section 5.26.060. Effective on or after January 1, 2002, such term shall also include any Catch-Up Contributions made to the Plan on behalf of a Participant as specified in Section 5.26.060B.

4344. "Tax Deferred Contributions Account" means an account to which the Tax Deferred Contributions and, effective January 1, 2002, Catch-Up Contributions, subject to any action taken by the Administrative Committee under Section 5.26.190 to establish a separate account or subaccount for such Catch-Up Contributions, made for each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, are credited.

4445. "Termination Pay" means the amount paid to a Participant upon termination of County employment as a redemption of unused accrued benefits as provided in Los Angeles County Code Section 6.24.040A or as leaving vacation described in Los Angeles County Code Section 6.18.070C (these accrued benefits commonly referred to as "Time Certificates"). The Termination Pay taken into account for all purposes under the Plan shall be limited in accordance with Code Section 401(a)(17).

4546. "Termination Pay Contribution Account" means an account to which the Termination Pay Contribution made for each Participant, and any earnings, investment gains or losses and applicable Plan expenses allocable thereto, is credited.

~~46~~47. “TPA” means a third-party administrator who has entered into a contract with the County to provide record-keeping or other administrative services for the Plan.

~~47~~48. “Trial Court Act” means the Trial Court Employment Protection and Governance Act, California Government Code Section 71600 et seq.

~~48~~49. “Trial Court Employee” means a “trial court employee,” as defined under the Trial Court Act, who is an Eligible Employee.

~~49~~50. “Trial Court Entity” means each Los Angeles County Municipal Court, Los Angeles County Superior Court, and each unified, successor trial court entity (or portion thereof) established in the County pursuant to California Government Code Section 70200 et seq.

~~50~~51. “Trust Agreement” means any agreement between the County and a Trustee as in effect from time to time.

~~51~~52. “Trustee” means any person that is a custodian or trustee and that is appointed by the Board of Supervisors of the County to hold and administer some or all of the assets of the Plan pursuant to Part 8 of this chapter.

~~53~~53. “Valuation Date” means the date with respect to which the value of the Plan assets or any portion thereof is determined. Unless otherwise determined by the Administrative Committee, a Valuation Date occurs each day.

~~53~~54. "Year of Service" means an Employee shall be credited with a Year of Service for each Plan Year (including the Plan Year commencing September 1, 1984, and ending December 31, 1984) in which he is employed by the County and is a Participant in the Plan or in the Horizons Plan.

**SECTION 11.** Section 5.26.040 is amended to read as follows:

**5.26.040 Commencement of Participation.**

. . .

B. An Eligible Employee who does not enter into a Compensation Deferral Agreement or Salary Deduction Agreement may become a Participant by entering into a Payroll Deduction Authorization Agreement as provided in Section 5.26.175; provided, however, that (1) an Eligible Employee who becomes a Participant pursuant to this subsection B shall cease to be a Participant immediately upon his termination of employment with the County in the event that (i) he is not entitled to a Termination Pay Contribution upon termination of employment with the County, and (ii) no portion of the Investment Fund is credited to his Account and held for his benefit as of his Severance Date, and (2) no Eligible Employee may become a Participant pursuant to this subsection B on and after January 1, 2008, and any Eligible Employee who became a Participant solely pursuant to this subsection B shall cease to be a Participant, unless he has an Account balance on that date.

**SECTION 12.** Section 5.26.060 is amended to read as follows:

**5.26.060 Tax Deferred Contributions**

...

C. Notwithstanding any other provision to the contrary, a Participant or an Eligible Employee may elect to defer a fixed percentage or dollar amount of the portion of his Eligible Earnings consisting of Termination Pay. A Participant's Termination Pay deferral shall be based on the deferral election on record on the last day of the month prior to the month the Separation from Employment occurs. An Eligible Employee must execute a Participation Agreement with the County not later than the month prior to the month the Separation from Employment occurs.

**SECTION 13.** Chapter 5.26 is hereby amended to add Part 4.5 to read as follows:

**PART 4.5 SETTLEMENT AWARDS**

**5.26.171 Application to Settlement Awards.** Notwithstanding anything in this Plan to the contrary, the provisions in this Part 4.5 shall apply with respect to any Settlement Award that a Participant receives on or after January 1, 2008.

A. Definitions. For purposes of this Part 4.5, the following terms when used with initial capital letters shall have the following respective meanings:

1. "Contribution Date" means each date in a calendar month on which Participants make Tax Deferred Contributions and After-Tax Contributions pursuant to Part 3 of Chapter 5.26.

2. "Current-Year Award" means the portion of a Settlement Award intended to make a Participant whole with respect to lost wages and benefits during the Current-Year Settlement Period, which shall be treated as Compensation under the Plan.

3. "Current-Year Settlement Period" means the period during the Plan Year in which a Participant receives a Settlement Award that begins on the first date in such Plan Year on which the Participant loses any wages or benefits as a result of his or her demotion, suspension, or termination and that ends on the date that the Participant receives the Settlement Award. If the County demotes, suspends or terminates a Participant in a Plan Year prior to the Plan Year in which the Participant receives a Settlement Award, the first day of the Current-Year Settlement Period shall be January 1<sup>st</sup> of the Plan Year in which the Participant received such Settlement Award.

4. "Deemed Compensation" means the sum of a Participant's Prior-Year Award plus any Compensation that the Participant received (if any) during the Prior-Year Settlement Period.

5. "Prior-Year Award" means the portion (if any) of the Settlement Award intended to make a Participant whole with respect to lost wages and benefits during the Prior-Year Settlement Period.

6. "Prior-Year Settlement Period" means the portion (if any) of a Participant's period of demotion, suspension, or termination that occurs prior to the Current-Year Settlement Period.

7. "Settlement Award" means any compensation that a Participant receives pursuant to an order, judgment, award or approved settlement from an administrative agency, arbitrator or court or an executed settlement agreement between a Participant and a County advocate that causes the Participant to be retroactively reinstated to his or her position with the County following the County's demotion, suspension or termination of such Participant and that requires or instructs the County to make such Participant whole for lost wages and benefits during the period of his or her demotion, suspension or termination without requiring the County to take specific actions with respect to the Plan.

B. Tax Deferred Contributions and After-Tax Contributions.

1. For purposes of applying the provisions in Part 3 of Chapter 5.26 (including, without limitation, the limits set forth therein), the terms of this Section 5.26.171.B shall apply with respect to each Current-Year Award.

2. Each Participant who receives a Current-Year Award shall be deemed to be eligible for a contribution of a fraction of the award on each Contribution Date that falls within the Current-Year Settlement Period, with the denominator of such fraction equal to the number of Contribution Dates in the Current-Year Settlement Period and the numerator of such fraction equal to the total amount of the Current-Year Award. The terms of a Participant's Compensation Deferral Agreement and/or Salary Deduction Agreement in effect as of each Contribution Date within the Current-Year Settlement Period shall apply to determine the portion of the Current-Year Award to be deferred and/or deducted and contributed to the Plan with respect to such Contribution Date.

3. For purposes of this Section 5.26.171.B, the terms of a Participant's Compensation Deferral Agreement and/or Salary Deduction Agreement in effect as of each Contribution Date within the Current-Year Settlement Period shall be determined as follows:

a. For a Participant who continued to be an Eligible Employee during the Current-Year Settlement Period, the Participant's actual deferral



and/or deduction elections in effect as of each Contribution Date shall apply to determine the portion of the Current-Year Award to be deferred and/or deducted and contributed to the Plan with respect to each such Contribution Date.

b. For a Participant who was not an Eligible Employee during the Current-Year Settlement Period, the Participant's actual deferral and/or deduction election in effect as of the date that such Participant ceased to be an Eligible Employee shall apply to determine the portion of the Current-Year Award to be deferred and/or deducted and contributed to the Plan with respect to each Contribution Date.

4. Each Tax Deferred Contribution and After-Tax Contribution that is made with respect to a Contribution Date as provided in this Section 5.26.171.B shall be deemed to have been made on such date.

C. Matching Contributions.

1. For purposes of applying the provisions in Part 4 of Chapter 5.26 (including, without limitation, the limits set forth therein), the terms of this Section 5.26.171.C shall apply with respect to each Current-Year Award.

2. With respect to each month in the Current-Year Settlement Period, the department to which a Participant has been reinstated shall make a Matching Contribution to the Matching Contributions Account of such Participant in an amount equal to the difference between the Matching Contribution the Participant actually received in such month (if any) and the Matching Contribution the Participant

would have received in such month if the Tax Deferred Contributions described in Section 5.26.171.B that are made with respect to such month had been made on the Contribution Dates in such month.

3. Each Matching Contribution that is made to a Participant's Matching Contributions Account pursuant to this Section 5.26.171.C shall be deemed to have been made in the month with respect to which such Matching Contribution was made. Matching Contributions attributable to 5.26.110.D or E shall be deemed to have been made in the month with respect to which such contribution is made.

D. Prior-Year Settlement Period.

1. For purposes of applying the provisions in Parts 3 and 4 of Chapter 5.26 (including, without limitation, the limits set forth therein), the terms of this Section 5.26.171.D shall apply with respect to each Prior-Year Award.

2. No portion of the Prior-Year Award shall be deferred or contributed to the Participant's Tax Deferred Contributions Account.

3. Corrective Contributions.

a. The department to which a Participant is reinstated shall make a corrective contribution to the Participant's Tax Deferred Contributions Account with respect to each Contribution Date in the Prior-Year Settlement Period, in an amount equal to the positive difference (if any) between (a) a fraction, the numerator of which is equal to 2% of such Participant's Deemed Compensation and the

denominator of which is equal to the number of Contribution Dates in the Prior-Year Settlement Period, less (b) the Tax Deferred Contribution the Participant made on such Contribution Date (if any).

b. The department to which a Participant is reinstated shall make a corrective contribution to the Participant's Matching Contributions Account with respect to each month in the Prior-Year Settlement Period in an amount equal to the positive difference (if any) between (a) a fraction, the numerator of which is equal to 4% of such Participant's Deemed Compensation and the denominator of which is equal to the number of months in the Prior-Year Settlement Period, less (b) the Matching Contribution the Participant actually received in such month (if any).

4. Each corrective contribution that is made with respect to a month within the Prior-Year Settlement Period as provided in this Section 5.26.171.D shall be deemed to have been made in such month. Notwithstanding anything to the contrary in this Section 5.26.171.D, the corrective contributions that a Participant is entitled to receive pursuant to this Section shall be reduced to the extent such contributions exceed the limits referenced in Section 5.26.160.

E. Contributions to Reflect Earnings. The department to which a Participant has been reinstated shall make a contribution to the Plan to reflect lost earnings on each contribution made pursuant to Sections 5.26.171.B through 5.26.171.D with respect to such Participant in accordance with the written procedures maintained by the County pursuant to Section 5.26.171.F.

F. Procedures to Implement Part 4.5.

1. The County shall maintain written procedures to implement this Part 4.5. Such procedures shall require the department to which a Participant is reinstated to notify the County prior to the Participant's receipt of a Settlement Award for the provisions in Section 5.26.171.B to apply with respect to such Settlement Award.

2. The County shall require each department that fails to provide advance notice of a Settlement Award as described in this Section 5.26.171.F to make all applicable Plan contributions to which a Participant is entitled pursuant to this Part 4.5 with respect to such award.

**SECTION 14.** Section 5.26.173 is amended as follows:

**5.26.173 Amount of Contribution.**

Subject to the limitations contained in Section 5.26.160, effective December 3, 2004, an Eligible Employee (including an Eligible Employee who has already become a Participant pursuant to Section 5.26.040A) may, pursuant to a Payroll Deduction Authorization Agreement, elect to have the County deduct a fixed percentage or dollar amount from his Termination Pay and contribute such fixed percentage or dollar amount to the Plan pursuant to a Payroll Deduction Authorization Agreement. The County shall pick up such contribution under Code Section 414(h)(2). Notwithstanding any other provision of the Plan, on and after January 1, 2008, no Payroll Deduction Authorization Agreements may be entered, and no Termination Pay Contributions shall be made to or

received by the Plan on behalf of any Participant pursuant to this Part 5 of the Plan, irrespective of whether such Participant has entered a Payroll Deduction Authorization Agreement before that date.

**SECTION 15.** Section 5.26.300 is hereby amended to read as follows:

**5.26.300 Withdrawal of Contributions**

...

D. A Participant who has withdrawn his entire After-Tax Contributions Account (if any), his entire Rollover Contributions Account (if any) and his entire Matching Contributions Account (to the extent vested) may in addition withdraw all or a part of his Tax Deferred Contributions Account (excluding any earnings credited to such Account on or after January 1, 1989), provided that the Participant has attained 59 1/2 or demonstrated to the Administrative Committee that he is suffering from Hardship. A withdrawal shall not be permitted for Hardship unless such withdrawal is on account of an immediate and heavy financial need of the Participant and is necessary to satisfy such financial need.

1. Effective as of January 1, 2006, the determination of whether a Participant has an immediate and heavy financial need shall be made by the Administrative Committee on the basis of all relevant facts and circumstances. Nevertheless, a withdrawal shall be deemed to be made on account of an immediate and heavy financial need of a Participant if the withdrawal is on account of:

- a. Expenses for (or necessary to obtain) medical care that would be deductible under Section 213(d) of the Code (determined without regard to whether the expenses exceed 7.5% of adjusted gross income);
- b. The purchase (excluding mortgage payments) of a principal residence of the Participant;
- c. The payment of tuition for the next semester or quarter of post-secondary education for the Participant, the Participant's spouse, the Participant's children, or the Participant's dependents (as defined in section 152 of the Code, and for taxable years beginning on or after January 1, 2005, without regard to section 152(b)(1), (b)(2) or (d)(1)(B) of the Code);
- d. The need to prevent the eviction of the Participant from his principal residence or the foreclosure on the mortgage of the Participant's principal residence;
- e. On and after January 1, 2007, payment for burial or funeral expenses for the Participant's deceased parent, spouse, children or dependents (as defined in section 152 of the Code but without regard to subsection 152(d)(1)(B));
- f. On and after January 1, 2007, expenses for the repair of damage to the Participant's principal residence that would qualify for the casualty deduction under section 165 of the Code (determined without regard to whether the loss exceeds 10% of adjusted gross income); or
- g. Any other financial need which the Commissioner of Internal

Revenue, through the publication of revenue rulings, notices, and other documents of general applicability, may from time to time designate as a deemed immediate and heavy financial need as provided in Section 1.401(k)-1(d)(2)(iii)(C) of the Treasury Regulations.

2. Effective as of January 1, 2006, a withdrawal shall not be treated as necessary to satisfy an immediate and heavy financial need of a Participant to the extent the amount of the withdrawal exceeds the amount required to relieve the financial need or to the extent such need may be satisfied from other resources that are reasonably available to the Participant. The determination of whether the amount of a withdrawal is necessary to satisfy an immediate and heavy financial need shall be made by the Administrative Committee on the basis of all relevant facts and circumstances. Nevertheless, the amount of a withdrawal shall be deemed to be necessary to satisfy an immediate and heavy financial need of a Participant if: (a) the amount of the distribution is not in excess of the amount of the immediate and heavy financial need; (b) the Participant has obtained all distributions (other than Hardship distributions) and nontaxable (at the time of the loan) loans available under the terms of this Plan or any other plans of deferred compensation maintained by the County; and (c) the Participant irrevocably elects to suspend all elective contributions and employee contributions under this Plan (e.g., After-Tax Contributions and Tax Deferred Contributions) and all other plans of deferred compensation maintained by the County from the date on which the withdrawal is made until the close of the six-calendar-month period that began on the first day of the month following the date on which the withdrawal is made. For the

purposes of this subsection D.2., the term "other plans of deferred compensation" include, without limitation, all qualified and non-qualified deferred compensation plans and any cash or deferred arrangements that are part of a cafeteria plan, except that it does not include the mandatory employee contribution component of a defined benefit plan or welfare plan. For the purposes of this subsection D.2. the County includes the County and all other employers which are required to be treated as a single "employer" under Treasury Regulation section 1.401(k)-6.

3. Distributions may be made for expenses described in subsections 1.a., c. or e. (relating to medical, tuition, and funeral expenses, respectively) for a primary Beneficiary under the Plan as if that Beneficiary were the Participant's spouse or dependent.

**SECTION 16.** Section 5.26.499 is hereby added to read as follows:

**5.26.499 Special Contribution Rule for Special Eligible Employees.**

Notwithstanding any other provisions of this Plan, pursuant to a compliance statement from the Internal Revenue Service dated October 19, 2007, effective September 1, 1994, a Special Eligible Employee may continue to have Tax Deferred Contributions made for him or her provided that no Tax Deferred Contributions shall be made on behalf of any Special Eligible Employee for services performed after March 31, 2004. A Special Eligible Employee who has ceased to be an Eligible Employee may have no County Contributions other than Tax Deferred Contributions made for him or



her until he or she again commences participation pursuant to Section 5.26.040. No Tax Deferred Contributions will be made on behalf of any Special Eligible Employee for services performed after March 31, 2004, until he or she again commences participation pursuant to Section 5.26.040.

**SECTION 17.** Section 5.26.610 is amended to read as follows:

**5.26.610 Rollovers and Plan-to-Plan Transfers**

...

B. Rollovers from the Plan

...

4. For distributions made after December 31, 1992, a Participant's surviving spouse who becomes eligible to receive a distribution on the Participant's death under Section 5.26.270 of the Plan or an Alternate Payee who is a Participant's spouse or former spouse who becomes eligible to receive a distribution under Section 5.26.465 of the Plan shall be treated as the Participant for purposes of this section, except that the term "eligible retirement plan" shall not include an annuity plan described in Code Section 403(a) or a defined contribution plan which is qualified under Code Section 401(a). For distributions made on or after January 1, 2002, a Participant's surviving spouse who becomes eligible to receive a distribution on the Participant's death under Section 5.26.270 of the Plan or an Alternate Payee who is a Participant's spouse or former spouse who becomes eligible to receive a distribution

under Section 5.26.465 of the Plan shall be treated as the Participant for purposes of this section. A Participant's surviving Beneficiary who is not a spouse and becomes eligible to receive a distribution on the Participant's death under Section 5.26.270 of the Plan, may elect a direct trustee-to-trustee rollover to an individual retirement account or individual retirement annuity under (as defined in section 408 of the Code) established to receive such distribution in accordance with Code section 402(c)(11).

...

D. Trustee-to-Trustee Transfers to Purchase Permissive Service Credit and as Repayment of Contributions and Interest.

1. Notwithstanding Sections 5.26.240 and 5.26.300, effective on or after September 1, 2007, a Participant may direct the Administrative Committee to make a direct trustee-to-trustee transfer of all or part of the Participant's Accounts, to the extent vested, to a defined benefit governmental plan (as defined in Code section 414(d)) in California if such transfer is (a) for the purchase of service or retirement credit that may be purchased under the terms of such defined benefit governmental plan, or (b) a repayment of contributions (including interest thereon) that may be made under the terms of such defined benefit governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer.

2. Unless the Participant directs otherwise, transfers shall be made pro rata from each subaccount within the Participant's Account and from each Investment Fund in which those subaccounts are invested.

3. The Administrative Committee may take any action and may require the Participant to provide any information or documentation necessary to permit the Administrative Committee to satisfy any obligation imposed on the Administrative Committee by the Code and the regulations thereunder to make a reasonable determination that the trustee-to-trustee transfer satisfies the requirements of the Code and the terms of the Plan and will be accepted by the transferee plan.

E. Certain Prior Trustee-to-Trustee Transfers to Purchase Permissive Service Credit and as Repayment of Contributions and Interest.

1. Effective on or after January 1, 1998, an Identified Participant may direct, and will be treated as having directed, the Administrative Committee to make a direct trustee-to-trustee transfer of his or her Transferred Benefits to a defined benefit governmental plan (as defined in Code section 414(d)) in California if such transfer is (a) for the purchase of service or retirement credit that may be purchased under the terms of such defined benefit governmental plan, or (b) a repayment of contributions (including interest thereon) that may be made under the terms of such defined benefit governmental plan with respect to an amount previously refunded upon a forfeiture of service credit under the plan or under another governmental plan maintained by a State or local government employer.

2. For purposes of this Section 5.26.610.E only:

a. An "Identified Participant," is a Participant identified by the TPA as having rolled over to a defined benefit governmental plan funds that were not eligible for distribution or withdrawal as provided under Part 7 of the Plan.

b. An Identified Participant's "Transferred Benefits" is the portion of that Participant's Account that was not eligible for distribution or withdrawal under Part 7, but which was nevertheless rolled over to a defined benefit governmental plan.

3. The Administrative Committee may take any action and may require the Participant to provide any information or documentation necessary to permit the Administrative Committee to satisfy any obligation imposed on the Administrative Committee by the Code and the regulations thereunder to make a reasonable determination that the trustee-to-trustee transfer satisfies the requirements of the Code and the terms of the Plan and will be accepted by the transferee plan.

**SECTION 18.** Section 5.26.700 is hereby deleted in its entirety.

**~~5.26.700 EGTRRA Sunset Provisions.~~**

~~The changes made to this Plan in accordance with the terms of the Economic Growth and Tax Relief Reconciliation Act of 2001 ("EGTRRA"), shall expire and no longer be effective upon the sunset of the applicable provisions of EGTRRA. The sections of the Plan that will no longer be effective (in whole or in part) upon the sunset~~

~~of applicable EGTRRA provisions include: 5.26.020.17 (last sentence); 5.26.035B (Code Section 401(a)(17) limits); 5.26.060B (Catch-Up Contributions authorized); 5.26.100B, C, E; 5.26.160B (Code Section 415 limits); 5.26.300D(3) (suspension period for Tax Deferred and After-Tax Contributions in the event of a Hardship Withdrawal); 5.26.330; 5.26.610 (Rollover provisions) and such other provisions that the Administrative Committee determines are no longer applicable due to the sunset of relevant EGTRRA provisions. Upon the sunset of the EGTRRA provisions, and notwithstanding anything in the Plan to the contrary, the Plan shall be construed in accordance with the terms of the Plan in effect as of December 31, 2001, except to the extent such terms are inconsistent with the applicable provisions of the Code and guidance issued thereunder, in which case, the Plan will be construed consistent with such applicable law.~~

**SECTION 19.** Pursuant to Government Code Section 25123(f), this ordinance shall take effect immediately upon final passage.

\*The Executive Office/Clerk of the Board of Supervisors shall insert the ordinance number provided for in Subsection 5.26.020 of the County Code.

[525AWARDPRODPCEO]

**RESOLUTION OF THE BOARD OF SUPERVISORS  
OF THE COUNTY OF LOS ANGELES  
AMENDING THE SAVINGS PLAN TO ADDRESS CERTAIN SPECIAL ELIGIBLE  
EMPLOYEES**

WHEREAS, the County maintains the County of Los Angeles Savings Plan ("Plan"), which is intended to be a qualified plan within the meaning of Internal Revenue Code ("IRC") section 401(a);

WHEREAS, words and phrases used in this resolution with initial capital letters have the definitions set forth in the Plan as amended by Ordinance \_\_\_\_\_ (unless otherwise defined);

WHEREAS, under Plan sections 5.26.020, 5.26.040 and 5.26.050, active participation is open to Eligible Employees only;

WHEREAS, the County determined that 84 participants who ceased to be Eligible Employees due to a change in employment classification or entering an excluded collective bargaining unit (the "Special Eligible Employees" as defined in the Plan), were inadvertently permitted to continue to make Tax Deferred Contributions and receive Matching Contributions under the Plan;

WHEREAS, all Tax Deferred Contributions with regard to affected ineligible Employees have ceased for compensation earned after March 31, 2004;

WHEREAS, in order to address this operational issue, on June 23, 2005, the County filed a voluntary correction submission with the Internal Revenue Service ("IRS") to ensure the Plan's continued tax-favored status under IRC section 401(a);

WHEREAS, in connection with the submission, on October 19, 2007, the IRS issued a compliance statement acknowledging that the identified operational error will not impact the Plan's tax-qualified status provided that, within 150 days, the County amends the Plan in the manner provided by Ordinance \_\_\_\_\_, which permits the affected Special Eligible Employees to leave Tax Deferred Contributions previously made on their behalf in their respective accounts;

WHEREAS, as required by the IRS, Ordinance \_\_\_\_\_ provides that the Board shall identify the Special Eligible Employees pursuant to this resolution;

NOW THEREFORE BE IT RESOLVED that the Special Eligible Employees are identified by their Participant identification numbers on Attachment A to this resolution;

BE IT RESOLVED FURTHER that Ordinance \_\_\_\_\_ amending the Plan is hereby adopted;

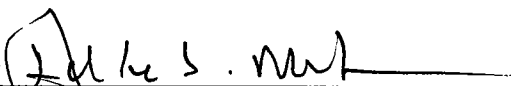
The forgoing resolution was on the \_\_\_\_ day of \_\_\_\_\_, 2007, adopted by the Board of Supervisors of the County of Los Angeles and ex officio the governing body of all other special assessment and taxing districts, agencies and authorities for which said Board so acts.

SACHI A. HAMAI  
Executive Office-Clerk of the  
Board of Supervisors  
Of the County of Los Angeles

By \_\_\_\_\_  
Deputy

APPROVED AS TO FORM  
BY COUNTY COUNSEL

RAYMOND G. FORTNER, JR.

By  \_\_\_\_\_  
Deputy

# ATTACHMENT A

## Savings Plan Special Eligible Employees

<b>GWRS Individual ID #</b>	<b>INELIGIBLE DATE</b>	<b>LAST ELIGIBLE CNT DATE</b>	<b>Ineligible Deferrals thru 15-Oct- 2004</b>	<b>Ineligible Matches thru 15-Oct- 2004</b>	<b>Last Deferral Date</b>
922851	16-Sep-94	15-Nov-94	\$17,170.87	\$207.33	Mar-04
923016	26-Nov-94	15-Jan-95	\$9,589.79	\$304.62	Mar-04
919687	24-Dec-94	15-Feb-95	\$14,732.74	\$76.06	Mar-04
922388	19-Mar-95	15-May-95	\$43,464.47	\$0.00	Mar-04
913994	4-Aug-95	15-Oct-95	\$11,670.96	\$932.02	Mar-04
912805	1-Dec-95	15-Feb-96	\$15,314.48	\$0.00	Mar-04
914021	1-May-96	15-Jul-96	\$14,284.89	\$279.38	Mar-04
891390	1-Aug-96	15-Oct-96	\$27,885.27	\$539.94	Mar-04
903879	1-Oct-96	15-Dec-96	\$16,173.72	\$399.74	Mar-04
925945	24-Oct-96	15-Dec-96	\$20,702.67	\$408.38	Mar-04
921638	1-Nov-96	15-Jan-97	\$13,720.97	\$419.26	Mar-04
921711	22-Nov-96	15-Jan-97	\$19,689.34	\$414.29	Mar-04
912973	9-Jun-97	15-Aug-97	\$15,411.14	\$257.06	Mar-04
907867	10-Nov-97	15-Jan-98	\$16,659.65	\$0.00	Mar-04
915714	17-Nov-97	15-Jan-98	\$11,917.97	\$0.00	Mar-04
902722	1-Dec-97	15-Feb-98	\$9,544.79	\$0.00	Mar-04
925918	17-Apr-98	15-Jun-98	\$10,890.27	\$0.00	Mar-04
925909	1-Jun-98	15-Aug-98	\$11,723.66	\$0.00	Mar-04
895107	29-Jul-98	15-Sep-98	\$10,505.80	\$0.00	Mar-04
1261258	6-Sep-98	15-Nov-98	\$12,526.68	\$0.00	Mar-04
915599	15-Oct-98	15-Dec-98	\$14,416.67	\$0.00	Mar-04
915928	1-Apr-99	15-Jun-99	\$12,816.48	\$0.00	Mar-04
921159	16-Apr-99	15-Jun-99	\$8,772.84	\$0.00	Mar-04
924450	20-May-99	15-Jul-99	\$10,426.58	\$0.00	Mar-04
921839	27-Jun-99	15-Aug-99	\$9,392.06	\$0.00	Mar-04
904544	6-Jul-99	15-Sep-99	\$7,020.29	\$0.00	Mar-04
909193	1-Aug-99	15-Oct-99	\$13,846.93	\$0.00	Mar-04
898500	1-Sep-99	15-Nov-99	\$9,102.98	\$0.00	Mar-04
926372	19-Oct-99	15-Dec-99	\$12,551.51	\$0.00	Mar-04
920129	1-Nov-99	15-Jan-00	\$37,386.94	\$0.00	Mar-04
926767	6-Dec-99	15-Feb-00	\$17,337.30	\$0.00	Mar-04
897163	1-Feb-00	15-Apr-00	\$12,570.37	\$0.00	Mar-04
908325	19-Jun-00	15-Aug-00	\$12,766.39	\$0.00	Mar-04
1649336	10-Jul-00	15-Sep-00	\$6,648.30	\$0.00	Mar-04
2115922	10-Jul-00	15-Sep-00	\$5,708.94	\$0.00	Mar-04
1689922	1-Nov-00	15-Jan-01	\$8,934.13	\$0.00	Mar-04
907138	16-Nov-00	15-Jan-01	\$11,532.40	\$0.00	Mar-04
895387	1-Dec-00	15-Feb-01	\$8,737.06	\$0.00	Mar-04
895976	9-Jan-01	15-Mar-01	\$14,338.52	\$0.00	Mar-04
923262	12-Jan-01	15-Mar-01	\$8,250.97	\$0.00	Mar-04
926362	13-Feb-01	15-Apr-01	\$11,760.53	\$0.00	Mar-04
1886139	1-Mar-01	15-May-01	\$8,484.42	\$0.00	Mar-04
896128	5-Mar-01	15-May-01	\$6,678.65	\$0.00	Mar-04



# ATTACHMENT A

## Savings Plan Special Eligible Employees

GWRS Individual ID #	INELIGIBLE DATE	LAST ELIGIBLE CNT DATE	Ineligible Deferrals thru 15-Oct- 2004	Ineligible Matches thru 15-Oct- 2004	Last Deferral Date
926741	16-Apr-01	15-Jun-01	\$7,590.27	\$0.00	Mar-04
464068	1-May-01	15-Jul-01	\$14,611.23	\$0.00	Mar-04
2009764	7-May-01	15-Jul-01	\$8,464.38	\$0.00	Mar-04
891150	15-May-01	15-Jul-01	\$16,698.91	\$0.00	Mar-04
921001	17-Jul-01	15-Sep-01	\$6,581.75	\$0.00	Mar-04
2733458	16-Aug-01	15-Oct-01	\$12,655.07	\$0.00	Mar-04
922098	1-Sep-01	15-Nov-01	\$6,209.19	\$0.00	Mar-04
907610	16-Oct-01	15-Dec-01	\$5,471.54	\$0.00	Mar-04
925798	9-Nov-01	15-Jan-02	\$7,412.18	\$0.00	Mar-04
920640	6-Dec-01	15-Feb-02	\$5,755.44	\$0.00	Mar-04
2241824	16-Jan-02	15-Mar-02	\$8,490.38	\$0.00	Mar-04
926664	1-May-02	15-Jul-02	\$7,567.50	\$0.00	Mar-04
926601	24-May-02	15-Jul-02	\$8,503.03	\$0.00	Mar-04
1524234	1-Jul-02	15-Sep-02	\$3,220.62	\$0.00	Mar-04
924342	12-Jul-02	15-Sep-02	\$4,183.26	\$0.00	Mar-04
905827	16-Jul-02	15-Sep-02	\$17,632.93	\$0.00	Mar-04
926593	11-Sep-02	15-Nov-02	\$2,727.84	\$0.00	Mar-04
2965079	12-Oct-02	15-Dec-02	\$2,577.46	\$0.00	Mar-04
2643510	15-Oct-02	15-Dec-02	\$1,549.91	\$0.00	Mar-04
1723795	16-Oct-02	15-Dec-02	\$767.34	\$0.00	Mar-04
2039122	16-Oct-02	15-Dec-02	\$4,051.93	\$0.00	Mar-04
920680	1-Nov-02	15-Jan-03	\$2,668.75	\$0.00	Mar-04
923711	1-Nov-02	15-Jan-03	\$5,974.01	\$0.00	Mar-04
926300	4-Nov-02	15-Jan-03	\$7,176.37	\$0.00	Mar-04
913554	1-Jan-03	15-Mar-03	\$2,109.72	\$0.00	Mar-04
2423103	8-Jan-03	15-Mar-03	\$2,126.88	\$0.00	Mar-04
1109071	24-Jan-03	15-Mar-03	\$1,962.79	\$0.00	Mar-04
926634	18-Mar-03	15-May-03	\$4,130.04	\$0.00	Mar-04
2710300	16-Apr-03	15-Jun-03	\$5,078.78	\$0.00	Mar-04
892898	16-May-03	15-Jul-03	\$2,389.61	\$0.00	Mar-04
1101549	23-Jun-03	15-Aug-03	\$1,340.70	\$0.00	Mar-04
923077	1-Jul-03	15-Sep-03	\$4,062.11	\$0.00	Mar-04
905873	1-Jul-03	15-Sep-03	\$664.16	\$0.00	Mar-04
921802	16-Jul-03	15-Sep-03	\$1,152.96	\$0.00	Mar-04
2901016	1-Aug-03	15-Oct-03	\$91.81	\$0.00	Mar-04
3000126	1-Aug-03	15-Oct-03	\$807.45	\$0.00	Mar-04
2696179	1-Aug-03	15-Oct-03	\$869.29	\$0.00	Mar-04
926531	1-Sep-03	15-Nov-03	\$800.24	\$0.00	Mar-04
895103	7-Oct-03	15-Dec-03	\$362.85	\$0.00	Mar-04
925592	22-Oct-03	15-Dec-03	\$4,557.60	\$0.00	Mar-04
916807	9-Nov-03	15-Jan-04	\$272.88	\$0.00	Mar-04